fault with many of the rulings on arbitrated issues made by the Commission), there are several rulings which should be reconsidered and may be the subject of further hearing.[18] These rulings affect the documents filed by the parties and will adversely impact the permanent rates that are contemplated by the Award.

Among the most critical issues which must be corrected are: depreciation cost factor, intrastate access charge "ending date," and avoided cost issues. (The issues are discussed herein following the paragraph order of the Award.)

Unbundled elements - The Commission should reconsider its rulings on unbundling as it has gone far beyond the requirements of FTA 96 in its attempt to accelerate the development of competition. Examples of this include dark fiber and sub-loop unbundling, neither of which the FCC required. Award at paras. 4, 6, 8. The FCC was arbitrary and capricious in ordering unbundling of systems which were not network elements, such as requiring the unbundling of operational support systems, and that have no role in transmitting a call over the network. This Commission should not follow suit, as such unbundling is not necessary to promote competition and is beyond the unbundling contemplated by FTA 96.

Support Functions - The Award makes SWBT's progress on the development and implementation of "new" electronic interfaces a factor in evaluating compliance with §271(c) of FTA 96. The development of new electronic interfaces is not a requirement of FTA 96 or the FCC's First Report and Order in 96-98. The FCC's First Report and Order at paragraph 523 requires only that an incumbent local exchange carrier (ILEC) provide access to those operation support systems

---

[18] The Commission has repeatedly stated that this arbitration is not a "contested" case under the APA. Id., 21 Tex. Reg. at 8484. Thus, while the Commission may not have contemplated motions for rehearing in this context, the issues raised and the possible relief of rehearing is entirely consistent with FTA 96 and the standard of review that the Commission must utilize when reviewing agreements. Moreover, SWBT must be prudent in protecting its appellate rights, and in that regard, moves for rehearing on the issues raised in this filing. Toward that end, SWBT respectfully asks the Commission to reconsider points raised in prior SWBT filings/briefs/motions which have previously been denied.

that are currently available to itself. Accordingly, this provision of the Award should be reconsidered as going beyond the requirement of FTA 96. Award at para. 26.

Service Quality Data Costs - The Commission properly ruled that LSPs must pay SWBT's cost in complying with LSP audit requests. The Commission then inconsistently ruled that when SWBT compiles service quality data for such audits (e.g., repair time intervals by LSP). SWBT should not be allowed to charge LSPs for the cost of such compilation. Award at paras. 28. 29. While SWBT is supportive of fair competition, it is not fair or reasonable for SWBT to be ordered to incur additional costs as a result of competition (without compensation) that its competitors do not have to bear. Like audits, SWBT should be able to assess LSPs the cost of service quality data. To hold otherwise is confiscatory, arbitrary and capricious.

Branding - The Award holds that LSPs may negotiate with SWBT to brand the covers of the White Pages directories. Award at para. 34. This issue was not on the DPL and should be deleted from the award on that basis alone. Further, neither FTA 96 nor the FCC Order requires or even mentions branding of directory covers. Moreover, to do so would be a taking of property that neither Congress nor the FCC intended and would be violative of the First Amendment. There was also discussion by the Commission about LSPs negotiating to purchase unbound directories to place their own covers on the books. This issue also was not on the DPL, was not contemplated by the FTA 96 or the FCC, and would also be an unauthorized taking of property. More importantly, neither is the branding of directories nor the providing of "unbound" books is a requirement of the FTA 96.

Access to subscriber listings - AT&T submitted this issue for arbitration, it has now reached agreement with SWBT. Award at para. 43. Although this issue was placed under the category of telephone directories in the Award, what AT&T was seeking had nothing to do with directories. AT&T wanted non-disc access to the directory assistance database so that AT&T could also provide directory assistance by making inquiries into the database in the same manner that SWBT operators do. The parties have agreed on this is reflected in the AT&T filed document.[19]

---

[19] Although not arbitrated nor required by the FTA 96, AT&T and SWBT have also agreed to an exchange of directory listings for the purpose of establishing and maintaining a directory assistance database. This is called the Mutual Exchange of Directory Assistance

Avoided Cost Discount - The avoided cost discount of 21.6% is tainted by the FCC rules and is, in fact, the product of rules stayed by the Eighth Circuit. Award at para 50. At most, this discount, like other cost factors/rates, should be interim and subject to a true-up after the generic cost proceeding. As discussed herein, the soundest approach is for the Commission to adopt the service-by-service approach.

EUCL - Another ruling in the Award that should be reconsidered is the application of the avoided cost discount to the EUCL. Award at para. 51. This requirement makes no sense as the EUCL is neither a cost that SWBT avoids in a resale environment, nor a telecommunications service to which an avoided cost discount should be applied. Rather, the EUCL is an interstate cost recovery mechanism that must be collected in total and not discounted by any device whether in the context of providing a subscriber line at retail or for resale. It is inappropriate to apply the avoided cost discount to the EUCL or to include it in calculations.

More importantly, the FCC in its First Report and Order, held that the Subscriber Line Charge ("SLC") (i.e., the EUCL) is not subject to the wholesale pricing standard of Section 252(d)(3).[20] First Report and Order, CC Docket No. 96-98, para. 984. The apparent rationale for applying the discount to the EUCL in the Award appears to be driven more by a mathematical/accounting formula (i.e., because EUCL revenues were included in the denominator) than by any actual cost avoided reason as required by FTA 96. SWBT urges the adoption of a service-by-service approach to avoided costs to determine the actual costs avoided for each service available for resale. Continued reliance on the aggregate approach results in an excessive discount that does not recognize the particular costs actually avoided as well as an inappropriate treatment of interstate EUCL revenues.

Intrastate Access Charges - The Commission should reconsider the possible termination of intrastate access charge recovery (e.g., June 13, 1997) as indicated in the Award.

Listings, is attached as part of AT&T's document and uses market-based rates. If AT&T desires to go into the publishing business, SWBT will negotiate a mutual exchange of published subscriber listings at market-based rates. Directory publication is not a telecommunications service and should not be part of an interconnection agreement.

[20] This is completely consistent with the fact that the EUCL is a cost recovery mechanism and not an avoided cost nor a service subject to the discount of avoided cost.

Award at para. 57. The ambiguity of the Award will lead to industry turmoil over interexchange charges which have no basis for consideration in this proceeding. This arbitration is about local interconnection. It is not about access charges. FTA 96 makes it clear that Sections 251 and 252 are not applicable to interexchange service or are intended to affect access charges (i.e., the sections are to govern interconnection between competing providers of local exchange service and not between LECs and IXCs for interexchange services). The Commission must recognize that regardless of provider, if a call is interexchange on an end-to-end basis, access charges must be assessed, and not charges for local call termination. Nothing in federal or state law authorizes any other result. Therefore, the Award should be clarified to avoid creating possible confusion about a $600 million revenue stream in Texas and, if intended, should be reconsidered as going beyond the scope of this arbitration, contrary to FTA 96, Section 251(d)(3) and 291 (and PURA 95's prohibition against reducing switched access revenues; Section 3.352(d)).

Optional EAS - The reciprocal compensation provisions of the Award involving optional EAS ignore existing intrastate access and treat optional EAS as local traffic and should be reconsidered. Award at para. 59. As the Commission is well aware, the majority of optional EAS has been initiated by numerous communities in Texas in conjunction with the incumbent LEC under the "joint" provisions of Subst. R. §23.49(b)(8). If an existing "toll/access" arrangement is changed to EAS, and the only compensation available to the terminating company is a "cost-based" rate, then the LEC cannot reasonably be expected to be willing to accept such an arrangement. Negotiated EAS compensation was intended to replace "access" rates, which are not cost-based. Even the stimulation effect of flat-rate pricing for retail EAS traffic will not make up the revenue shortfall to replace access rates with cost-based rates.

The Commission's Award discourages SWBT and other ILEC from maintaining existing EAS plans or pursuing new areas, contrary to the goals of Section 3.262 of PURA 95. If ILECs are discouraged from voluntarily pursuing EAS, this will force communities to prove in new EAS under more difficult standards than have been employed under the previous joint arrangements. In other words, optional EAS should not be the subject of arbitrations under FTA 96 since it is not local interconnection and the Commission exceeded its jurisdiction as the federal arbitrators on this issue. In addition, unless SWBT agrees to a negotiated EAS compensation rate, any compulsory

arbitration ostensibly under Subst. R.§23.97 should not be an allowed vehicle for LSPs to avoid or reduce access rates which would be in violation of Section 3.352(d) of PURA 95 and Section 251(d)(3 and 261) FTA 96.

Optional EAS/EMS Additive - The Commission should clarify if the $6.25 optional EAS/EMS additive is an interim rate. It is SWBT's position that it is not interim as it is not in the interim rate section of the Award. AT&T's document treats this as an interim rate. (AT&T. Attachment 12, para. 9.8) (SWBT understands that the $6.25 is "interim" until number portability and not "interim" until January 15, 1997.[21]

Symmetrical Transport and Termination Rates - The Commission should reconsider paragraph 61 of the Award as this provision is contrary to basic cost causer/cost recovery principles. Costs should not be based on geography served alone but should be based on costs incurred to serve an area.

Cost Factors - The Commission needs to reconsider several erroneous rulings regarding cost factors to be used (or not used) in the cost studies to be refiled as a result of the Award.[22]

The Commission erred and should reconsider including insufficient spare plant capacity in the pricing of unbundled network elements, thereby understating SWBT's costs in actually providing service.[23] Award at para 65, 66. Instead of recognizing the amount of spare plant actually required to provide service under real operating conditions (and in compliance with Commission service quality rules), the Commission included much less spare capacity without adequately considering actual requirements. This incorrect decision amounts to a prudency

---

[21] See discussion, November 7, 1996, Tr. 180-186.

[22] While review of the filed agreements/documents may be able to proceed without resolving these issues, the issues should be resolved prior to the filing of the cost studies in January, 1997. In addition, as the parties file such agreements and/or negotiate, they should have the benefit of knowing that correct cost factors will be used in formulating the rates for interconnection, etc.

[23] The specific fill factor rulings on General Inputs in paragraph 66 are inconsistent with the Commission's statements in paragraph 654. Specifically, the fill factors which are adopted are the full or near-full usage capacity inputs (except for distribution cable in STP processor capacity).

disallowance on spare capacity without a full prudency hearing. This ruling hits SWBT with a "double whammy" (admittedly an overused term in this arbitration) since it continues for SWBT alone the stringent quality of service rules which necessitates the additional spare plant capacity, yet when the Commission sets prices for SWBT's unbundled network elements used by its competitors, the Commission acts as if lesser quality of service rules existed. Not surprisingly, no competitor in the hearing took the position that SWBT should provide services to the competitor at lower quality of service standards -- only that they should be priced in such a manner.

The Commission further erred in reducing SWBT's rate of return (used in pricing unbundled network elements) from the level authorized at the time SWBT elected out of rate-of-return regulation and into incentive regulation under Subtitle H of PURA 95. Award at para. 68. In reducing SWBT's rate of return, the PUC is pricing these unbundled elements at a level much less than included in the prices for SWBT's retail services, thus further supporting competitive entry beyond being "pro-competition" to being "pro-competitor."

The Commission's ruling on depreciation (Award at para. 69) lives is erroneous because it is inconsistent with PURA 95, which specifically provides that: "A company electing under Subtitle H of this title may determine its own depreciation rates and amortizations, but shall notify the Commission of any changes." §3.151. SWBT is an electing company under Subtitle H. As such, SWBT is entitled by statute to determine its own depreciation rates and amortizations, which right is being unlawfully denied by the Commission's ruling on depreciation in this docket. The depreciation lives and amortizations determined to be applicable by SWBT are those it filed as a part of its cost studies. SWBT is clearly entitled to use of those SWBT-determined economic depreciation lives in its LRIC cost studies under Rule 23.91, pursuant to the above-quoted provision in PURA 95; it is equally entitled to the use of those same depreciation rates and amortizations in this proceeding. The most important principle in regard to use of depreciation lives is consistency, as reflected in the PURA 95 requirement that "Such rates, methods, and accounts shall be utilized uniformly and consistently throughout the rate setting and appeal proceedings." Id. SWBT has made the determination of depreciation rates and amortizations that it is entitled to make pursuant to PURA 95, §3.151; those rates and amortizations should now be utilized uniformly throughout these proceedings.

The Commission erred in adopting a series of depreciation rates based on historical (embedded) data that will not reflect the shortened technology lives in the new competitive environment.[24] Award at para. 69. This error has the dramatic effect of significantly understating the largest single cost component, virtually guaranteeing that SWBT cannot recover its costs, even under the forward-looking methodology adopted by the Commission. The Commission should adopt the forward-looking economic lives and depreciation rates proposed by SWBT that are based on expected competitive conditions (as provided for in new state and federal laws) rather than lives based on historic conditions. The Commission looks to the future on practically all other cost issues, but on the issue of depreciation, looks to the past. Competitors in this proceeding most likely have depreciation rates that are at least 50% greater than what was approved for SWBT. These competitors are permitted to book rates which are more reflective of the competitive environment that the Commission rightfully embraces, then inconsistently uses historic (embedded) depreciation rates for SWBT.

The Commission's use of FCC prescribed depreciation rates that are "retirement lives" based upon embedded historical data reflecting the retirement of regulated telephone plant only at the point in time when there was no remaining customer service on the facility might have been appropriate in a rate of return environment where there was no competition for local services. It routinely use economic depreciation lives reflecting the actual equipment lives of telecommunications equipment in a competitive environment.

The Commission also erred in excluding inflation adjustments for determining multi-year interconnection contract prices, unlike virtually all other commercial contracts. Award at para. 71.[25] While forward-looking costs are "incremental" in nature, they are not "timeless" in a temporal sense. Such costs are calculated for a particular year (e.g, 1996) and, if general inflation continues (as is usually the case), the exclusion of an inflation factor will understate the incremental costs for

---

[24] The FCC has even expressed an expectation that depreciation costs would increase to reflect the changes that are occurring in the industry. First Report and Order at para. 686.

[25] Again, such a ruling is in consistent with part cost study practices under §23.91, where Staff has raised no objection to inflation factors.

the next and subsequent years. In other words, if inflation is not to be included, then arbitration agreements should only be for one-year terms -- otherwise the Award virtually guarantees under-recovery of costs. Of course, none of the parties want such short-term contracts. thus. SWBT should be permitted to recover its forward-looking costs over the contract life by either average pricing. including inflationary impacts that result in a uniform price over the contract-life. or a series of one-year prices in the contract. In any event, pricing based on today's incremental cost and requiring a constant price to be available for longer than one year without the cost of inflation, will ensure under-recovery of the cost of providing service and that amounts to unlawful confiscation.

The Commission also erred in omitting substantial amounts of SWBT's conduit, pole and trenching costs in determining the forward-looking cost for pricing outside plant facilities (loops and interoffice trunking). Award at para. 73. The Commission improperly denied SWBT the opportunity to recover a substantial amount of the actual forward-looking cost of its conduit and pole costs on the incorrect assumption that either: (1) SWBT would not incur those costs because other carriers would share the construction cost, or (2) SWBT would recover those costs through leasing structure (poles and conduits) space to others.

There is no evidence to support the first assumption, except for electric companies which have historically shared poles with SWBT, which is a fact recognized in SWBT's cost studies. However, the possibility of sharing with other entities could only occur where SWBT has no facilities or is adding facilities at the exact same time that new carriers are also placing their facilities on exactly the same route. The Commission will recall that, since many of the carriers contend that SWBT's hub and spoke network arrangement is not the most economically efficient, it is unlikely that these same carriers will follow SWBT's network design when (and if) deploying their own facilities.

Further, as to the second assumption, since TELRIC is supposed to develop costs of the network elements, revenues recovered from leasing space is irrelevant to cost development, unless some significant portion of the structure as included in SWBT's cost study is actually leased today and is not used for the provision of network services. However, this is not the case, as very little pole space and duct space is leased today. Thus, SWBT's development of costs based upon the full cost of structure is reasonable. Conversely, excluding a major portion of that structure based

upon faulty assumptions for which there is no supporting evidence is unreasonable and unlawfully confiscatory.

Charges for directories and informational pages - The Award improperly refuses to allow SWBT to recover internal costs in publishing a directory. Award at para. 80.

Directories are not unbundled network elements, and therefore SWBT is not required to use a TELRIC cost study to establish these rates. However, SWBT, as a conservative measure, filed a TELRIC study. The Award then orders a different methodology that doesn't provide for cost-recovery, and specifically disallows SWBT's internal costs. Some of the examples of internal costs that should be included were referenced in SWBT's motion for clarification on this issue.[26] None of the parties that SWBT incurs costs in the production of a directory.

SWBT does not understand the methodology described in the Award (at para. 80) and has been informed in negotiations that the LSPs do not understand it either. Notwithstanding SWBT's position that the cost methodology in the Award is facially wrong because it does not include internal costs, SWBT requests clarification and/or a worksession with the appropriate PUC staff to assist SWBT and the LSPs in understanding the methodology so that compliance can be measured and the Commission's intentions carried out.

---

[26] In SWBT's Motion for Clarification of November 4, 1996, SWBT argued:

> It appears that the methodology to calculate costs does not include SWBT's internal costs such as building the listings, maintaining the database, inputting the listings from numerous LSPs, updating the database with current information forwarded by numerous LSPs, reviewing the LSP's information to ensure proper format, contacting LSPs regarding incorrect information, negotiating with the directory publisher regarding the directories, contacting numerous LSPs regarding the deadlines set by the publisher, ordering the directories or delivering them." SWBT's Motion at p.5.

Collocation - The interim rates mandated by the Award are not representative of SWBT's costs to provide collocation and this provision should be reconsidered. Award at para. 93. In addition, Collocation should be handled on a case-by-case basis rather than by tariff.

Intervening Law - The Commission rejected portions of SWBT's intervening law language and added a provision on its own to the effect that any modification to the First Report and Order in CC Docket No. 96-98 (as to costing and pricing rules), including the case pending in the Eighth Circuit Court of Appeals, is not intervening law. Award at para. 97. Changes to the First Report and Order and the Eighth Circuit case are precisely the type of proceedings that SWBT and the parties would reasonably expect to be included in the intervening law provision. The apparent rationale for the Commission's additional language was the Commission's unlawful post-hearing declaration that it was not following the FCC's costing and pricing but was, instead, using its own rules. This declaration and this portion of the associated intervening law provision is unlawful and should be reconsidered. The Commission's provision is an unlawful attempt to force parties to waive appeal rights. SWBT's original intervening law language should be approved. SWBT Brief, October 18, 1996, pp. 70-71.

III. THE COMPULSORY ARBITRATION PROCEEDING AND THE RULES UNDER WHICH IT WAS CONDUCTED ARE UNLAWFUL

A. The Arbitration Award and Agreements Must Comply with FTA 96 and PURA 95 – Not with the FCC Rules

1. The Improper and Unlawful Leverage of the FCC Rules

For any hearing, a fundamental question that must be answered at the outset is what are the rules to be applied during the hearing.[27] In this case, the Commission squarely answered this fundamental question at the outset: the hearing would be conducted not only under FTA 96 but also under the FCC's rules interpreting FTA 96, outlined in the mammoth First Report and Order. The Commission will recall the numerous times that lawyers, witnesses and staff referred to the then

---

[27] As stated above, SWBT raised several legal concerns with the Commission's Dispute Resolution rules in Project No. 15557. Those arguments will not be repeated here but are incorporated herein by reference.

recently issued FCC order and rules. At times, some of the witnesses and lawyers read the order and rules at length during the hearing. At the outset of the case, the Commission will also directed SWBT to file TELRIC cost studies – a type of study never before conducted in Texas, but required by the subsequently stayed FCC rules.

SWBT believes that many of the FCC's rules are unlawful (such as costing and pricing, avoided cost, unbundling) and consistently reserved its rights to challenge them. SWBT's views are shared by state commissions which have recently filed briefs in the Eighth Circuit. The Eighth Circuit's Stay Order, issued after the Commission had decided some arbitration issues but before it had decided other issues, demonstrates that there is a reasonable probability that SWBT is correct.

The indelible taint of the FCC's rules has substantially affected the Arbitration Award and related agreements. They have led the Commission to make decisions which eviscerate facilities-based competition. Those decisions have set up a regulatory scheme where costing and pricing benefits favor resellers instead of facilities-based competitors. In fact, as indicated above, if the unbundling requirements remain "as is" or as AT&T wants, there will not be much need even for resale, as unbundling/rebundling will be the entry vehicle of choice for new entrants (i.e., no investment required, extremely low rates, leveraging the quality the incumbent provider's service). See III. A. 2., infra. Likewise, the FCC rules have resulted in an Arbitration Award and agreements that will seriously damage SWBT's existing access revenues, without simultaneously providing any substitute sources of funds with which to subsidize below-cost universal basic residential services. As a holder of a certificate of convenience and necessity, SWBT remains obligated to provide such services. See III. A. 3., infra.

To the extent this proceeding and the negotiations were conducted under the FCC rules, the resulting Arbitration Award and agreements are inconsistent with the FTA as interpreted in the Stay Order issued by the Eighth Circuit Court of Appeals on October 15, 1996. The Eighth Circuit stayed the FCC's costing and pricing rules and the "pick and choose" rule contained in the FCC's First Report and Order pending a final decision on the merits in that appeal. The Eighth Circuit emphasized that it is necessary to have private negotiations and arbitrations "without [AT&T

et al. having] the added leverage of the FCC's pricing rules." Stay Order at p. 19. As indicated. this entire case has been with AT&T et al. having the added leverage of the FCC's pricing rules.

The Commission cannot avoid this problem by making a post-hearing proclamation that it based its decisions on standards other than the FCC's rules. Award at para 62. footnote no. 5, para. 97. Factually this is simply untrue: the Commission based its decision on a record made. at the Commission's insistence, to address the FCC standards. But even if it were true that the Commission had shifted standards entirely after November 7, it would be illegal. Basic requirements under due process and procedural requirements of the Texas Administrative Procedure Act require parties to know the standards to be applied before a hearing, including the extent to which the hearing is being conducted under federal or state law, so that they can shape their evidence to address the controlling standards, and not after the decision. See Madden v. Texas Bd. Chiropractic Examiners, 663 S.W. 2d 622 (Tex. App. - Austin 1983, writ ref'd n.r.e.); Texas State Bd. of Pharmacy v. Seely, 764 S.W. 2d 806, 814-15 (Tex. App.- Austin 1988, writ denied); Lyeth v. Chrysler Corp., 929 F. 2d 891, 894 (2nd Cir. 1991). SWBT presented its evidence on the understanding that the applicable rules were the avoided cost, interconnection and costing (TELRIC) rules of the FCC. SWBT did not present evidence based upon actual or historical costs for virtually all of its facilities and services.[28]

Moreover, the Stay Order cannot be sidestepped by simply stating that it is applying a Texas TELRIC (i.e., Subst. Rule §23.91). Award at para. 62. While 23.91 may be appropriate to set a LRIC cost floor, it is not appropriate to use to set SWBT prices of interconnection and unbundled elements. Both TELRIC and 23.91 fail to consider SWBT's right to recover actual, not hypothetical or super-efficient costs of network elements, and thwart the federal and state goals of facilities-based competition. Moreover, both standards provide for less than the actual costs that

---

[28] SWBT did present the testimony of Paul Cooper, who discussed the actual costs for the loop. SWBT understood that this evidence was only offered and admitted for the limited purpose of providing a benchmark for comparison with TELRIC studies. SWBT did not present evidence of actual costs for other network elements and did not understand that the Commission would entertain setting rates based upon actual costs even though this would be consistent with FTA 96. In any event, the actual loop costs were disregarded in the Award.

SWBT is entitled to recover under Section 252(d) of FTA 96.[29] Even if the Commission were correct that this is a Texas TELRIC, it is still illegal for the same reasons stated in the Stay Order with regard to the FCC's TELRIC.

If the Commission has the authority it appears to have under Section 152(b) of FTA 96 to establish intrastate prices, it must set rates that are just and reasonable for interconnection and network elements that are nondiscriminatory, based on cost (and include a reasonable profit). FTA 96, Section 252(d)(1). The interim rates and the directions to do further cost studies in this case under certain parameters violate these express requirements. For example, TELRIC or a TELRIC-like standard does not consider actual costs and requires presumption of hypothetical technology which likely will underestimate SWBT's costs and thus amount to subsidization of competitors. Similarly, as to wholesale rates, the rates are to be based on retail rates excluding costs that "will be avoided" (in contrast to being possibly avoidable). Section 252(d)(3). Again, the Commission, like the FCC, cannot ignore the applicable statutory standards.

2. Facilities-Based Competition

Members of the House Committee on Commerce, which had jurisdiction over FTA 96, recently filed a brief in the Eighth Circuit stating that the First Report and Order "blatantly disregards congressional intent."[30] The brief of these congressmen emphasized that the dual system of telecommunications is still in place after FTA 96. 47 U.S.C. §152(b). The brief also explains that the primary policy of FTA 96 is to encourage facilities-based competition, so that there is more investment in telecommunications facilities and more jobs, but that the FCC's pricing of unbundling and resale eviscerates facilities-based competition. As the Commission is aware, a strong Texas legislative preference for facilities-based competition is also the heart of PURA 95. (Section 3.2531(j)(2)).

---

[29] The absolute unfairness and unlawfulness of the regulatory approach to unbundling is apparent in that the unbundled rate for a service is less than the bundled rate in many cases, and even less than resold services with the avoided cost discount.

[30] See, Brief of Amici Curiae, (Dingell, Tauzin, Boucher, Hastert) in Iowa Utilities Board, et al. v. Federal Communications Commission, et al., No. 96-3321, United States Court of Appeals for the Eighth Circuit, November 15, 1996. (Attachment D).

The Arbitration Award and agreements simply ignore this fundamental thrust of controlling federal and Texas law. Nothing in the Arbitration Award and agreements encourages facilities-based competition. Every additional unbundling decision, every below-historical-cost pricing of unbundled elements, every below-realistic-future-cost pricing of such elements, and the below-avoided-costs pricing of wholesale services clearly discourages facilities-based competition. Nothing in the record from this proceeding demonstrates, and the Commission has provided no substantial reasoned explanation, how these decisions can be squared with facilities-based competition as intended under FTA 96 and PURA 95.

3. **Access Revenues**

Both FTA 96 and PURA 95 unquestionably contemplate protection of existing state access revenue sources, as a means of continuing to subsidize SWBT's provision of universal basic residential service at below-cost rates, unless and until adequate substitutes, that fairly spread such costs over all competitors, are in place. See, e.g., FTA 96 §§ 251(d)(2), 254(b)(4), 254(f); PURA 95 § 3.352(d). FTA 96 §254(b)(4) states that "All providers of telecommunications services should made an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." FTA 96 §254(f) states, in pertinent part, that "Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State, to the preservation and advancement of universal service in that State." SWBT submits that the statutes require such protections. In any event, to avoid constitutional problems, they must be so read.

The FCC's First Report and Order, the Arbitration Award and the resulting "agreements" are, however, sharply at odds with protection of access revenues. They result in unbundling at below-cost prices that make it economic for SWBT's competitors to dispense with resale and thereby bypass access charges completely. This severe problem would be acutely worsened if AT&T's unbundling/rebundling accounting scheme were adopted.

Finally, the Commission's June 13, 1997 cutoff of RIC/CCLC revenues, Arbitration Award at para. 57, will have a devastating impact on SWBT's access revenues. The Commission of course cannot guarantee, and should not assume, that the FCC and the Commission will have fully compensatory alternatives in place by that date. Nothing in the record in this proceeding

demonstrates, and the Commission has stated no substantial reasoned justification for expecting. full and timely substitutes.

B. Construe FTA 96 and PURA 95 to Avoid Unconstitutional Results and Unnecessary Takings

By federal law, the Arbitration Award and "agreements" must be consistent with FTA 96. § 252(e)(6). To the extent that FTA 96 preserves and does not preempt and override PURA 95. they must also be consistent with the Commission's controlling state statute, PURA 95. See § 252(d) and § 252(e)(3). This means that the Commission must harmonize both FTA 96 and PURA 95. When an agency is construing a statute, it must avoid interpretations that result in unconstitutional outcomes, or that result in unnecessary takings for which compensation must be provided. Bell Atlantic Tel. Co. v. FCC, 24 F.3d 1441 (D.C. Cir. 1994).

This same point was made by Texas Attorney General Dan Morales in his brief filed with the Eighth Circuit.[31] In that brief, the State of Texas adopted the section of the State Commission Parties' brief entitled "The FCC's Reading of the Act Would Render It Unconstitutional."[32]

The Arbitration Award and proposed "agreements" follow the "FCC's Reading of the Act" and would result in unconstitutional outcomes. In particular, the following major outcomes would be unconstitutional under the Fifth and Fourteenth Amendments to the U.S. Constitution and Art. I, Sections 15, 17 and 19 of the Texas Constitution:

- denial of access charge revenues used to subsidize mandatory universal service at below-cost rates, before implementation of a fully compensatory alternative. The Arbitration Award denies such revenues as of the June 13, 1997 cutoff of RIC/CCLC recovery and reduces them through below-cost "unbundling."
- denial of recovery of actual historical embedded costs of unbundled elements and interconnection. The Arbitration Award denies such costs through the

---

[31] See, State of Texas' Partial Adoption of Joint Brief of State Commission on Parties, filed November 15, 1996. (Attachment E)

[32] The State Commission Parties' brief is Attachment F.

use of modeling assumptions and inputs that are premised on hypothetical networks, and through decisions on rate of return; conduit, pole and trench; and spare capacity.

- forced wholesale rates at discounts greater than actual avoided costs. The Arbitration Award does so by using modeling assumptions and inputs that are premised on hypothetical avoidable costs.
- forward-looking prices that do not recover full forward-looking costs. The Arbitration Award does so by ignoring the acceleration of depreciation due to competition and by ignoring inflation after the first year.
- abrogating the regulatory compact and SWBT's franchise without simultaneously providing adequate compensation. The Arbitration Award does so by requiring SWBT to rely for compensation on revenues under future possible FCC and/or PUC orders and rules, and on future profits that might be earned in competitive markets.
- conditioning SWBT's entry into interLATA markets on its acquiescence in the foregoing.
- FCC commandeering of a state agency for its federal policy purposes in violation of state procedural and substantive law.

The Arbitration Award and proposed "agreements" also result in takings that go beyond what FTA 96 and PURA 95 plainly require. These include dark fiber, subloops, and operational support services.

C. Follow Legally Required Texas Procedures

Especially now that the Commission has stated that Texas substantive law (PURA 95), not the FCC's disputed and probably erroneous assertion of federal power, must control the pricing issues, the Commission must make its determinations in accordance with Texas procedural law. Texas procedural law requires either a contested case or a rulemaking, or a combination of both. The Commission has not yet utilized either or both procedures.

D. Remedy

The Eight Circuit Stay Order exists.[33] The dispute over the extent to which the FCC's First Report and Order order is valid exists, remains unresolved, and will not be finally resolved for some time. So is the dispute over what PURA 95 validly requires. The question is. what can be done by this Commission to implement local exchange competition and to facilitate interLATA competition despite these disputes and uncertainties?

The answer is clear: set SWBT's proposed rates as interim rates, and revisit the merits in a proceeding conducted free of the "added leverage" of the FCC rules, with a record made under Texas law addressing PURA 95 and FTA 96 substantive standards.

By "interim," SWBT means that the Commission would provide for adjustments, up or down, in these prices and rates, as may subsequently be determined to be valid, relating back to the unbundled elements, interconnections, and sales made under interim rates, and for surcharges or refunds as needed to reflect the prices and rates that should have been charged, to implement such decisions. On this approach no party to an interconnection agreement would, at the end, have paid or received more or less than the lawful amount.

CONCLUSION

The Commission should not approve the AT&T document as filed because it contains provisions that are outside the scope of this arbitration and have not been agreed to by SWBT. Moreover, the AT&T document contains provisions that are inconsistent with federal and state law and are not in the public interest. In addition, the Commission should reconsider various rulings as outlined herein. More fundamentally, this proceeding has been conducted in an unlawful manner and under unlawful rules.

At a minimum, a rehearing should be conducted free from the taint of the FCC's rules; informing the parties of the actual rules to be applied at the outset of the hearing; and, applying the rules in a manner consistent with federal and state laws and with the policies of encouraging facilities-based competition and protecting existing access revenue sources unless and until fully

---

[33] The United States Supreme Court has refused repeated attempts to vacate the Stay Order.

adequate and fair alternatives are in place. In the meantime, the Commission should adopt interim prices and rates as proposed by SWBT and provide that surcharges and refunds will be ordered when final valid determinations are made.

At most, the Commission should approve, reject, or modify only language in the filed documents which fairly implement its Award, and should not consider or resolve any additional issues at this time.

Respectfully submitted,

Edward L. Eckhart
General Attorney - Regulatory

Joseph E. Cosgrove, Jr.
Bar Card No. 00785640

G. MICHAEL BAUER
CHRISTIAN A. BOURGEACQ
MERRIE M. CAVANAUGH
D. MICHAEL CHAPPELL
THOMAS J. HORN
BARBARA R. HUNT
L. KIRK KRIDNER

ATTORNEYS FOR SOUTHWESTERN
BELL TELEPHONE COMPANY
1616 Guadalupe, Room 600
Austin, Texas 78701
(512) 870-5711
(512) 870-3420 (fax)

CERTIFICATE OF SERVICE

I, Joseph E. Cosgrove, Jr., Attorney for Southwestern Bell Telephone Company, certify that a true and correct copy of this document was served on the 2nd day of December, 1996, in the following manner: by hand delivery to Ms. Paula Mueller, Secretary of the Commission, Public Utility Commission of Texas, 1701 N. Congress Ave., Austin, Texas 78701; and by facsimile transmission or hand delivery to the parties of record.

Joseph E. Cosgrove, Jr.

DOCKET NO. 16226
COMPARATIVE LANGUAGE
ARBITRATION AWARD ISSUES

SOUTHWESTERN BELL END OF NEGOTIATION LANGUAGE	AT&T NOVEMBER 19, 1996 FILED LANGUAGE
ATTACHMENT 1 - ARBITRATED ISSUES	
2.2 AT&T will provide the exclusive interface to AT&T Customers in connection with the marketing, offering or provision of AT&T services, except as otherwise provided in this Agreement. In those instances where SWBT personnel interface directly with AT&T customers in connection with providing Resale services to AT&T orally (either in person or by telephone) or in writing, such personnel will identify themselves as acting on behalf of their local service provider.	2.2 AT&T will provide the exclusive interface to AT&T Customers in connection with the marketing, offering or provision of AT&T services, except as otherwise provided in this Agreement. In those instances where SWBT personnel interface directly with AT&T customers in connection with providing Resale services to AT&T orally (either in person or by telephone) or in writing, such personnel will identify themselves as acting on behalf of AT&T.
ATTACHMENT 2 - ARBITRATED ISSUES	
4.8 When SWBT employee visits the premises of an AT&T customer, the SWBT employee must inform the customer that he or she is there acting on behalf of their local service provider. Materials left at the customer premises (e.g., a door hanger notifying the customer of the service visit) must also inform the customer that SWBT was on their premises acting on behalf of their local service provider. 4.9 SWBT technicians will refer AT&T local customer to call their local service provider if an AT&T local customer requests a change to service at the time of installation.	4.8 When SWBT employee visits the premises of an AT&T customer, the SWBT employee must inform the customer that he or she is there acting on behalf of AT&T. Materials left at the customer premises (e.g., a door hanger notifying the customer of the service visit) must also inform the customer that SWBT was on their premises acting on behalf of AT&T. 4.9 SWBT technicians will refer AT&T local customer to AT&T if an AT&T local customer requests a change to service at the time of installation.
ATTACHMENT 3 - ARBITRATED ISSUES	
10.1.2 When a SWBT employee visits the premises of an AT&T local customer, the SWBT employee must inform the customer that he or she is there acting on behalf of their local service provider. Materials left at the customer premises (e.g., a door hanger notifying the customer of the service visit) must also inform the customer that SWBT was their premises acting on behalf their local service provider. 10.1.3 If a trouble cannot be cleared without access to AT&T's local customer's premises and the customer is not at home, the SWBT technician will leave at the customer's premises a non-branded "no access" card requesting the customer to call their local service provider for rescheduling of repair.	10.1.2 When a SWBT employee visits the premises of an AT&T local customer, the SWBT employee must inform the customer that he or she is there acting on behalf of AT&T. Materials left at the customer premises (e.g., a door hanger notifying the customer of the service visit) must also inform the customer that SWBT was their premises acting on behalf of AT&T. 10.1.3 If a trouble cannot be cleared without access to AT&T's local customer's premises and the customer is not at home, the SWBT technician will leave at the customer's premises a non-branded "no access" card requesting the customer to call AT&T for rescheduling of repair.

DOCKET NO. 16226
COMPARATIVE LANGUAGE
ARBITRATION AWARD ISSUES

SOUTHWESTERN BELL END OF NEGOTIATION LANGUAGE	AT&T NOVEMBER 19, 1996 FILED LANGUAGE
ATTACHMENT 6 - ARBITRATED ISSUES	
8.2.2.1 SWBT will provide dark fiber in the dedicated interoffice transport segment of the network as an unbundled network element under the following conditions: SWBT will offer its dark fiber to AT&T when they have collocation space in a SWBT tandem or end office, but may offer in pursuant to agreements that would permit revocation of an AT&T's right to use the dark fiber upon twelve (12) months' notice by SWBT. By March 1, 1997, the Parties will agree on a standardized form for leasing interoffice dark fiber. Thereafter, within 30 days from receipt of an AT&T request for interoffice dark fiber, SWBT either will grant the request and issue an appropriate lease or deny the request and provide AT&T with a written explanation demonstrating SWBT's need to use the specific fiber requested by AT&T within the twelve month period following AT&T's request. To exercise its right of revocation, SWBT must demonstrate that the subject dark fiber is needed to meet SWBT's bandwidth requirements or the bandwidth requirements of another LSP. An LSP may not, in twenty-four (24) month period, lease more than 25% of SWBT's excess dark fiber capacity in a particular dedicated interoffice transport segment. If SWBT can demonstrate within a twelve (12) month period after the date of a dark fiber lease that AT&T is using the leased dark fiber capacity at a level of transmission less than OC-12 (622.08 million bits per second), SWBT may revoke the lease agreement with AT&T and provide AT&T with sufficient alternative means of transporting the traffic. SWBT will provide AT&T with the ability to connect to interoffice dark fiber. **In each SWBT Central Office which serves as the point of termination for each interoffice dark fiber segment,** SWBT will provide AT&T an appropriate termination point on a distribution frame or its equivalent.	8.2.2.1 SWBT will provide dark fiber in the dedicated interoffice transport segment of the network as an unbundled network element under the following conditions: SWBT will offer its dark fiber to AT&T when they have collocation space in a SWBT tandem or end office, but may offer it pursuant to agreements that would permit revocation of an AT&T's right to use the dark fiber upon twelve (12) months' notice by SWBT. By March 1, 1997, the Parties will agree on a standardized form for leasing interoffice dark fiber. Thereafter, within 30 days from receipt of an AT&T request for interoffice dark fiber, SWBT either will grant the request and issue an appropriate lease or deny the request and provide AT&T with a written explanation demonstrating SWBT's need to use the specific fiber requested by AT&T within the twelve month period following AT&T's request. To exercise its right of revocation, SWBT must demonstrate that the subject dark fiber is needed to meet SWBT's bandwidth requirements or the bandwidth requirements of another LSP. An LSP may not, in twenty-four (24) month period, lease more than 25% of SWBT's excess dark fiber capacity in a particular dedicated interoffice transport segment. If SWBT can demonstrate within a twelve (12) month period after the date of a dark fiber lease that AT&T is using the leased dark fiber capacity at a level of transmission less than OC-12 (622.08 million bits per second), SWBT may revoke the lease agreement with AT&T and provide AT&T with sufficient alternative means of transporting the traffic. SWBT will provide AT&T with the ability to connect to interoffice dark fiber **in any facility where such fiber exists, subject to the procedures set forth in this paragraph.** SWBT will provide AT&T an appropriate termination point on a distribution frame or its equivalent.
Appendix Pricing - UNE, LOOPS (PAGE 1 OF 2) * Note, in addition, Central Office access charges apply and trip charges may apply, per SWBT's General Exchange Tariff, Section 27	

DOCKET NO. 16226
COMPARATIVE LANGUAGE
ARBITRATION AWARD ISSUES

SOUTHWESTERN BELL END OF NEGOTIATION LANGUAGE	AT&T NOVEMBER 19, 1996 FILED LANGUAGE
ATTACHMENT 7 - ARBITRATED ISSUES	
6.9 SWBT technicians will refer AT&T end user customers to their local service provider, if an AT&T end user customer requests a change to service at the time of installation. When a SWBT employee visits the premises of an AT&T end user customer, the SWBT employee must inform the customer that he or she is there acting on behalf of the customer's local service provider.	6.9 SWBT technicians will refer AT&T local customers to **AT&T**, if an AT&T local customer requests a change to service at the time of installation. When a SWBT employee visits the premises of an AT&T local customer, the SWBT employee must inform the customer that he or she is there acting on behalf of **AT&T**.
ATTACHMENT 8 - ARBITRATED ISSUES	
10.3 When a SWBT employee visits the premises of an AT&T local customer, the SWBT employee must inform the customer that he or she is there acting on behalf of their local service provider . Materials left at the customer premises (e.g., a door hanger notifying the customer of the service visit) must also inform the customer that SWBT was on their premises acting on behalf of their local service provider. 10.4 If a trouble cannot be cleared without access to AT&T's local customer's premises and the customer is not at home, the SWBT technician will leave at the customer's premises a non-branded "no access" card requesting the customer to call their local service provider for rescheduling of repair. *[Note: SWBT's proposed language inserted above, although not specifically noted on the "end of negotiations" language, was always stated by SWBT during negotiations.]*	10.3 When a SWBT employee visits the premises of an AT&T local customer, the SWBT employee must inform the customer that he or she is there acting on behalf of **AT&T**. Materials left at the customer premises (e.g., a door hanger notifying the customer of the service visit) must also inform the customer that SWBT was on their premises acting on behalf of **AT&T**. 10.4 If a trouble cannot be cleared without access to AT&T's local customer's premises and the customer is not at home, the SWBT technician will leave at the customer's premises a non-branded "no access" card requesting the customer to call **AT&T** for rescheduling of repair.
ATTACHMENT 12 - ARBITRATED ISSUES	
4.1 Transit Traffic (also known as Through-put) is a switching and transport function only, which allows one Party to send to a third party network through the other Party's tandem. Therefore, a Transit Traffic rate element applies to all MOUs between a Party and third party networks that transit the other Party's tandem switch. The originating Party is responsible for the appropriate rates unless otherwise specified. These prices are interim and will apply until further action of the PUC. The Transit Traffic rate element is only applicable when calls do not originate with (or terminate to) the transit Party's end user. There are two categories of Transit Traffic: 4.1.1) Local and 4.1.2) Optional Area:	4.1 Transit Traffic (also known as Through-put) is a switching and transport function only, which allows one Party to send **Local Traffic, as defined in Section 1.2,** to a third party network through the other Party's tandem. Therefore, a Transit Traffic rate element applies to all MOUs between a Party and third party networks that transit the other Party's tandem switch. The originating Party is responsible for the appropriate rates unless otherwise specified. These prices are interim and will apply until further action of the PUC. The Transit Traffic rate element is only applicable when calls do not originate with (or terminate to) the transit Party's end user.

DOCKET NO. 16226
COMPARATIVE LANGUAGE
ARBITRATION AWARD ISSUES

SOUTHWESTERN BELL END OF NEGOTIATION LANGUAGE	AT&T NOVEMBER 19, 1996 FILED LANGUAGE
4.1.1 The Local Transit Traffic rate element is applicable when both the originating and terminating end users are within SWBT local and mandatory exchanges as defined in Section 1.2 **4.2 The Parties also acknowledge that traffic originated in third party incumbent LEC exchange areas may traverse the SWBT tandem and terminate in other third party incumbent LEC exchange areas. Although direct connections could be used for this traffic, SWBT agrees to transit this traffic for the rate of $0.006 per MOU if the other incumbent LEC exchanges share a common mandatory local calling area with all SWBT exchanges included in a metropolitan exchange area. SWBT will provide a list of such incumbent LEC exchanges upon AT&T's request.** **4.3 All other traffic which transits a tandem will be treated as meet-point billing traffic as described in Section 6, unless otherwise agreed.**	4.2 Transit Traffic: Prices Tandem Switching $0.002453/MOU
5.1 Optional Calling Area Compensation (OCA) - For extended area traffic including Optional Area Traffic, except mandatory extended traffic addressed in Section 1.2 of this Attachment, interim compensation for termination of intercompany traffic will be the interconnection rates in effect between SWBT and other incumbent LECs, i.e., $.0183/MOU. This compensation rate applies to all terminating traffic for calls to and from a specific area and the associated metropolitan area. **This rate is independent of any retail service arrangement established by either AT&T or SWBT to their respective end users.** A list of such areas will be provided by SWBT to AT&T upon request. When cost-based interconnection rates for EAS are established by the PUC, AT&T traffic in SWBT's EAS areas will be subject to the lesser of the cost-based interconnection rates or the interconnection rates in effect between SWBT and other incumbent LECs for such traffic.	5.1 Optional Calling Area Compensation (OCA) - For extended area traffic including Optional Area Traffic, except mandatory extended traffic addressed in Section 1.2 of this Attachment, interim compensation for termination of intercompany traffic will be the interconnection rates in effect between SWBT and other incumbent LECs, i.e., $.0183/MOU. This compensation rate applies to all terminating traffic for calls to and from a specific area and the associated metropolitan area. A list of such areas will be provided by SWBT to AT&T upon request. When cost-based interconnection rates for EAS are established by the PUC, the reciprocal compensation rate for the termination of intercompany traffic in extended calling areas other than those in Section 1.2 will be subject to the lesser of the cost-based interconnection rates or the interconnection rates in effect between SWBT and other incumbent LECs for such traffic.
9.8 Until further action by the PUC interim rates will be applicable as follows. Each month, the Performing Party will receive $6.25 from the Receiving Party for each Optional EAS number ported during the period in which INP is applicable.	9.8 Until further action by the PUC interim rates will be applicable as follows. Each month, the Performing Party will receive $6.25 from the Receiving Party for each Optional EAS number ported during the period in which INP is applicable.

DOCKET NO. 16226
COMPARATIVE LANGUAGE
STIPULATED ISSUES

SOUTHWESTERN BELL END OF NEGOTIATION LANGUAGE	AT&T NOVEMBER 19, 1996 FILED LANGUAGE
ATTACHMENT 6 - STIPULATED ISSUES	
5.2.3.3.4 SWBT will make available to AT&T the ability to route all Directory Assistance and Operator Services calls (1+411, 0+411, 0-, and 0+ Local) dialed by AT&T Customers directly to the AT&T Directory Assistance and Operator Services platform. Customized Routing will not be used in a manner to circumvent the inter or Intra-LATA PIC process directed by the FCC.	5.2.4.4 SWBT will make available to AT&T the ability to route all Directory Assistance and Operator Services calls (1+411, 0+411, 0-, and 0+ Local, 0+IntraLATA toll, 0+HNPA-555-1212 (IntraLATA), 1+HNPA-555-1212 (IntraLATA)) dialed by AT&T Customers directly to the AT&T Directory Assistance and Operator Services platform. Customized Routing will not be used in a manner to circumvent the inter or Intra-LATA PIC process directed by the FCC.
5.2.3.3.5 SWBT will provide the functionality and features within its local switch (LS) to route AT&T customer-dialed Directory Assistance local calls to AT&T. (Designated trunks via Feature Group C signaling or as the Parties may otherwise agree, for direct-dialed calls (i.e., sent paid).)	5.2.4.5 SWBT will provide the functionality and features within its local switch (LS) to route AT&T customer-dialed Directory Assistance local and IntraLATA calls to AT&T. (Designated trunks via Feature Group D signaling, or as the Parties may otherwise agree, for direct-dialed calls (i.e., sent paid).)
5.2.3.3.6 SWBT will provide the functionality and features within its LS to route AT&T dialed 0/0+ local calls to AT&T (Designated trunks via operator services Feature Group C signaling.)	5.2.4.6 SWBT will provide the functionality and features within its LS to route AT&T dialed 0/0+ local and IntraLATA calls to AT&T (Designated trunks via operator services Feature Group C signaling.)
ATTACHMENT 13 - STIPULATED ISSUES	
Appendix Collocation 3.0 Space for Remote Switching Module Equipment 3.1 Where space permits, SWBT agrees to allow AT&T to locate remote switching module equipment (RSMs) in space dedicated to AT&T within SWBT's central office premises, for the purpose of accessing unbundled Network Elements or for network interconnection. SWBT will place no restriction or limitation on AT&T as to the use or functionality of that equipment, with the exception that SWBT is not required to permit the location of equipment used to provide enhanced services.	**Appendix Collocation** 3.0 Collocation of Remote Switching Module Equipment 3.1 Where space permits, SWBT agrees to allow AT&T to locate remote switching module equipment (RSMs) in space dedicated to AT&T within SWBT's central office premises, for the purpose of accessing unbundled Network Elements or for network interconnection. SWBT will place no restriction or limitation on AT&T as to the use or functionality of that equipment, with the exception that SWBT is not required to permit collocation of equipment used to provide enhanced services.
19.03 Semiannual Attachment and Occupancy Fees. SWBT's semiannual fees for attachments to SWBT's poles and occupancy of SWBT's ducts and conduits are specified in Exhibit I. For all attachments to SWBT's poles and occupancy of SWBT's ducts and conduits, AT&T agrees to pay SWBT's semiannual charges as specified in Appendix I. SWBT Appendix I shows as half duct rate of $0.315 per foot and states, "Each	19.03 Semiannual Attachment and Occupancy Fees. SWBT's semiannual fees for attachments to SWBT's poles and occupancy of SWBT's ducts and conduits are specified in Exhibit I. For all attachments to SWBT's poles and occupancy of SWBT's ducts and conduits, AT&T agrees to pay SWBT's semiannual charges as specified in Exhibit I Exhibit 1 includes the following text: "Conduit occupancy rates shown are for full-

SOUTHWESTERN BELL END OF NEGOTIATION LANGUAGE	AT&T NOVEMBER 19, 1996 FILED LANGUAGE
inner-duct is billed at the half duct rate."	sized ducts. Occupancy of inner-ducts will be at fractional rates proportionate to the number of inner-ducts contained in the full-sized duct."